

REQUEST FOR COUNCIL ACTION

MEETING

DATE: 7/07/03

159-

AGENDA SECTION: PUBLIC HEARINGS	ORIGINATING DEPT: PLANNING DEPARTMENT	ITEM NO. E-7
ITEM DESCRIPTION: Type III, Phase I (#03-02) Appeal of the Type III, Phase I (#03-09) Variance Denial		PREPARED BY: Randy Klement Planner

June 24, 2003

Rochester Zoning Board of Appeals Recommendation:

On June 4, 2003, the Rochester Zoning Board of Appeals denied the variance request of the applicant, Marc and Pam Shaft, for the property located at 1223 SW 36th Street. The property is in the R-1 (Mixed Single Family Residential) zoning district.

The applicant had requested a variance to allow for the construction of a house addition that will encroach into the minimum required rear yard. The Rochester Zoning Board of Appeals denied the variance request.

Council Action Requested:

Approve or deny the variance appeal by the applicant based on the original staff report and attachments submitted to the Rochester Zoning Board of Appeals at their June 4, 2003 meeting.

Attachments:

1. Copy of Minutes of the June 4, 2003, Rochester Zoning Board of Appeals meeting.
2. Copy of Staff Report and all attachments submitted to the Rochester Zoning Board of Appeals, dated May 27, 2003.

Distribution:

1. City Administrator
2. City Clerk
3. City Attorney
4. Planning Department File
5. Applicant: This item will be considered by the Council sometime after 7:00 p.m. on Monday, July 7, 2003, in the Council/Board Chambers at the Government Center, 151 SE 4th Street.

COUNCIL ACTION: Motion by: _____ Second by: _____ to: _____

Type III, Phase I, Variance Request #03-09 by Marc and Pam Shaft, to allow for the construction of a house addition that will encroach into the minimum required rear yard. The property is located at 1223 SW 36th Street and is in the R-1 (Mixed Single Family) Zoning District.

Mr. Klement presented the staff report dated May 27, 2003. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Mark Shaft of 1223 36th ST SW, Rochester, MN addressed the Board. He stated that he was a big game hunter and collected trophies. He stated that one of the reasons he purchased his house was because of the 12-ft high interior wall space for displaying his collection. He stated that the property was in a beautiful neighborhood and there was 26 acres of woods behind the house that was not zoned residential because it was within a watershed area. He stated that none of his neighbors objected to the addition.

Discussion ensued regarding the setback distances between the house and the property line.

Mr. Bagniefski asked if the Board could consider the fact that there would not be future development behind the house for the variance.

Mr. Klement replied no. He stated that the property behind the applicant's property was zoned R-1 and there was potential for future development.

Mr. Bagniefski asked the applicant why he could not build the addition within the 14-foot width.

Mr. Shaft replied that the great room needed to be large enough to allow for his trophy collection and he needed to incorporate a stairway because the house was multilevel.

Mr. Ohly explained the process of how the Board of Appeals could only grant a variance based on exceptional circumstances related to the physical property. The Board could not grant a variance based on personal possessions. He stated that the need to display a collection was not an exceptional circumstance related to the property.

Mr. Shaft replied that the value of his property had increased 80% since 1993 and that he could not afford to re-build the house in another location. He stated that they had minimized their original addition plan down from 20-feet wide to 16-feet. He stated that the house was built 25-feet from the road and the minimum variance for the house setback could have been 20-feet. The house was in process of being built when he signed the papers to close the loan on the property.

Mr. Ohly stated that the house being setback farther than the minimum 20 feet could be considered an exceptional circumstance related to the property.

Mr. Shaft replied yes.

Mr. Ohly stated that the applicant could have had the opportunity to move the house forward, but the house was already under construction when he purchased it.

Mr. Shaft replied yes. The setback choice had already been made and he could not change it.

Mr. Ohly stated that the house was setback 25 feet with the intention of making the neighborhood more visually appealing.

Mr. Shaft stated that, if the house had been set back 20 feet, he would not need a variance today.

Discussion ensued regarding the setback distances of the houses in the neighborhood.

Mr. Bagniefski asked if the applicant had relied on the builder to choose the setback of the house.

Mr. Shaft replied that, at the time he bought the house, he did not think about the setback of the house. He explained that it was not until he started the process of adding the addition that he discovered that the house had been set back too far.

Mr. Ohly closed the public hearing.

Mr. Bagniefski made a motion to deny variance request #03-09 by Marc & Pam Shaft based on staff findings. Mr. Langanki seconded the motion. The motion carried 3-1 with Mr. Ohly voting nay.

FINDINGS:

EXCEPTIONAL CIRCUMSTANCES: There does not appear to be an exceptional circumstance or condition that applies to the applicant's property that may not apply generally to other properties in the same zoning district. The proposed addition can be reduced in size and still meet the rear yard setback. Although the existing attached garage was not setback from the front lot line 20' as permitted by the zoning ordinance, the lot depth of approximately 115' does exceed the lot depth of 100' for a single family detached dwelling in the R-1 zoning district on a lot with a lot width of 60'. A single family detached dwelling in the R-1 zoning district requires a minimum lot size of 6,000 square feet with a minimum width at the building line of 60'.

REASONABLE USE: The granting of this variance request would not appear to be necessary to allow for the reasonable use of the applicant's property. The proposed addition can be reduced in size and still meet the rear yard setback.

ABSENCE OF DETRIMENT: The granting of this variance request is not materially detrimental to the public welfare or visually detrimental to the adjacent property but would be detrimental to the intent and purpose of the zoning ordinance.

Type III, Phase I, Variance Request #03-10 by Platinum Development Group to exceed the permitted number of Residential Development Identifications Signs for the Folwell Ridge Subdivision, which is located east of 23rd Avenue SW, north of Baihly Heights Second Subdivision and west of Folwell West Third Subdivision. The property is located in the R-1 (Mixed Single Family) Zoning District.

Mr. Klement presented the staff report dated May 29, 2003. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Klement stated that the Folwell Ridge Subdivision was allowed one set of signs into the subdivision and was asking for a variance to add an additional set of signs. He explained that the proposed signs would be located in the right-of-way and would require a revocable permit from the City. He explained the elevations, layout, and the design of the proposed signs. He stated that the Board needed to decide if there was enough merit to allow for a second set of signs for the subdivision.

Mr. Ohly asked if the other issues regarding the easements and right-of-way would be addressed at a later time.

Mr. Klement replied yes. The applicant would have to work out the right-of-way and utility easement issues with the Public Works Department and Rochester Public Utilities.

Mr. Langanki asked how far apart were the two entrances.

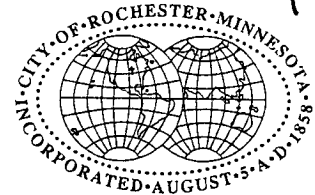
Mr. Klement replied approximately 2000 feet.

Mr. Bagniefski asked if the Board had ever granted variances in the past based on the configuration for a development for two entrances.

Mr. Klement replied that he was not aware of any other time when a developer had requested an additional set of signs.

Mr. Ohly opened the public hearing.

Mr. Brad King of 612 Hill Ave, Rochester, MN addressed the Board. He stated that his property was the last house that was built in the subdivision and would be north of the



163-

TO: Rochester Zoning Board of Appeals
FROM: Randy Klement, Planner *R-K*
DATE: May 27, 2003
RE: Variance (Type III, Phase I), #03-09

ROCHESTER-OLMSTED
PLANNING DEPARTMENT
2122 CAMPUS DR SE
ROCHESTER MN 55904-4744
ADMINISTRATION/PLANNING 507/285-8232
GIS/ADDRESSING/MAPPING 507/285-8232
HOUSING/HRA 507/285-8224
BUILDING CODE 507/285-8213
WELL/SEPTIC 507/285-8345
FAX 507/287-2275

Planning Department Review:

APPLICANT: Marc and Pam Shaft
1223 SW 36th Street
Rochester, MN 55902

LOCATION OF PROPERTY: Lot 32, Block 8, Bamber Ridge Subdivision

ZONING: R-1 (Mixed Single Family Residential Zoning District)

REFERRAL AGENCY COMMENTS: Attached

ANALYSIS:

The applicant is proposing to construct a 16' x 36' house addition and a 16' x 9'8" deck to the rear of the existing dwelling. The proposed addition will encroach to within 22'6" of the rear lot line on the north side of the property.

According to Section 62.222 – R-1 Site Appearance Standards of the City of Rochester Zoning Ordinance and Land Development Manual: The minimum rear yard for a single family detached dwelling is twenty-five feet (25'). The proposed house addition will encroach to within 22.5' of the rear lot line. The proposed open deck is considered an accessory structure and permitted to encroach into the rear yard.

The applicant requests:

- a variance of 2'6" to the minimum rear yard.



164
The Planning staff suggested findings are:

EXCEPTIONAL CIRCUMSTANCES: There does not appear to be an exceptional circumstance or condition that applies to the applicant's property that may not apply generally to other properties in the same zoning district. The proposed addition can be reduced in size and still meet the rear yard setback. Although the existing attached garage was not setback from the front lot line 20' as permitted by the zoning ordinance, the lot depth of approximately 115' does exceed the lot depth of 100' for a single family detached dwelling in the R-1 zoning district on a lot with a lot width of 60'. A single family detached dwelling in the R-1 zoning district requires a minimum lot size of 6,000 square feet with a minimum width at the building line of 60'.

REASONABLE USE: The granting of this variance request would not appear to be necessary to allow for the reasonable use of the applicant's property. The proposed addition can be reduced in size and still meet the rear yard setback.

ABSENCE OF DETRIMENT: The granting of this variance request is not materially detrimental to the public welfare or visually detrimental to the adjacent property but would be detrimental to the intent and purpose of the zoning ordinance.

MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to the minimum rear yard. This finding would not pertain in the case of denial.

Attachments:

1. Copy of Application
2. Copy of Applicant's Site Plan
3. Copy of Applicant's Site Survey
4. Copy of Site Location Map
5. Copy of Referral Comments
6. Copy of Findings for a Variance

Reviewed by: 

Marc & Pam Shaft
1223 36th Street SW
Rochester, MN 55902

Type III Phase I Variance

05/13/03

165-

Legal Description:

Lot 32, Block 8, Bamber Ridge, City of Rochester, Olmsted County, Minnesota

Reason for application:

We respectfully request a 2-1/2' variance (*) for building an addition to our home that would include: a Sunroom, Family/Great Room, & Deck. We feel that the additional living space while increasing the value of our property (and taxes) can be accomplished with harmonious consideration of our neighborhood.

(*) Please see Plot, Photo's and Building Plans attached

Our intent since purchasing our Builders spec home in March 1993 was to add on in the future as our family, income, and interests grew.

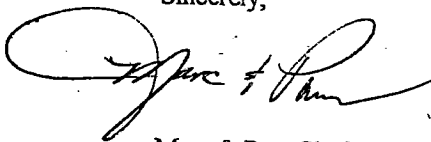
While working with contractors as a result of visiting the annual builders show in Rochester it was pointed out to us that we would need to get a variance if we wanted to add on a 20' deep addition. This information prompted me to meet with Rochester Zoning in January.

During this meeting, I learned that city zoning allowed a home to be set back 20' from the front and 25' in the back. Our hopes of adding on a 20' addition would require a 6' variance as our home is 39' from our back lot line. In short, a 14' addition could be built by code without a variance. I also learned that our home had unfortunately been set back from the front 24.9' (4.9' more than it need to be by code).

Since that time, my wife Pam and I have continued to work with our contractor, draftsman, and our neighbors to help us "maximize" our potential new living space while "minimizing" our variance request. As a result we believe that under the circumstances a 2-1/2' variance allowing us to build on a 16' addition does in fact help minimize the cities variance while helping to improve our neighborhood.

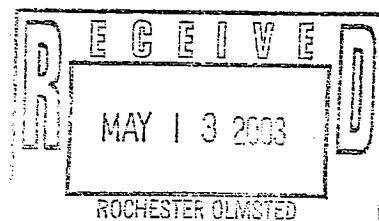
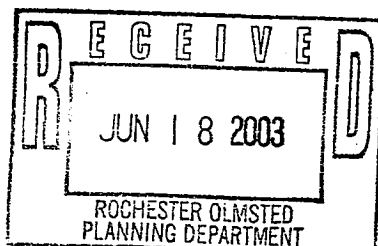
Your thoughtful consideration of this variance request is greatly appreciated.

Sincerely,



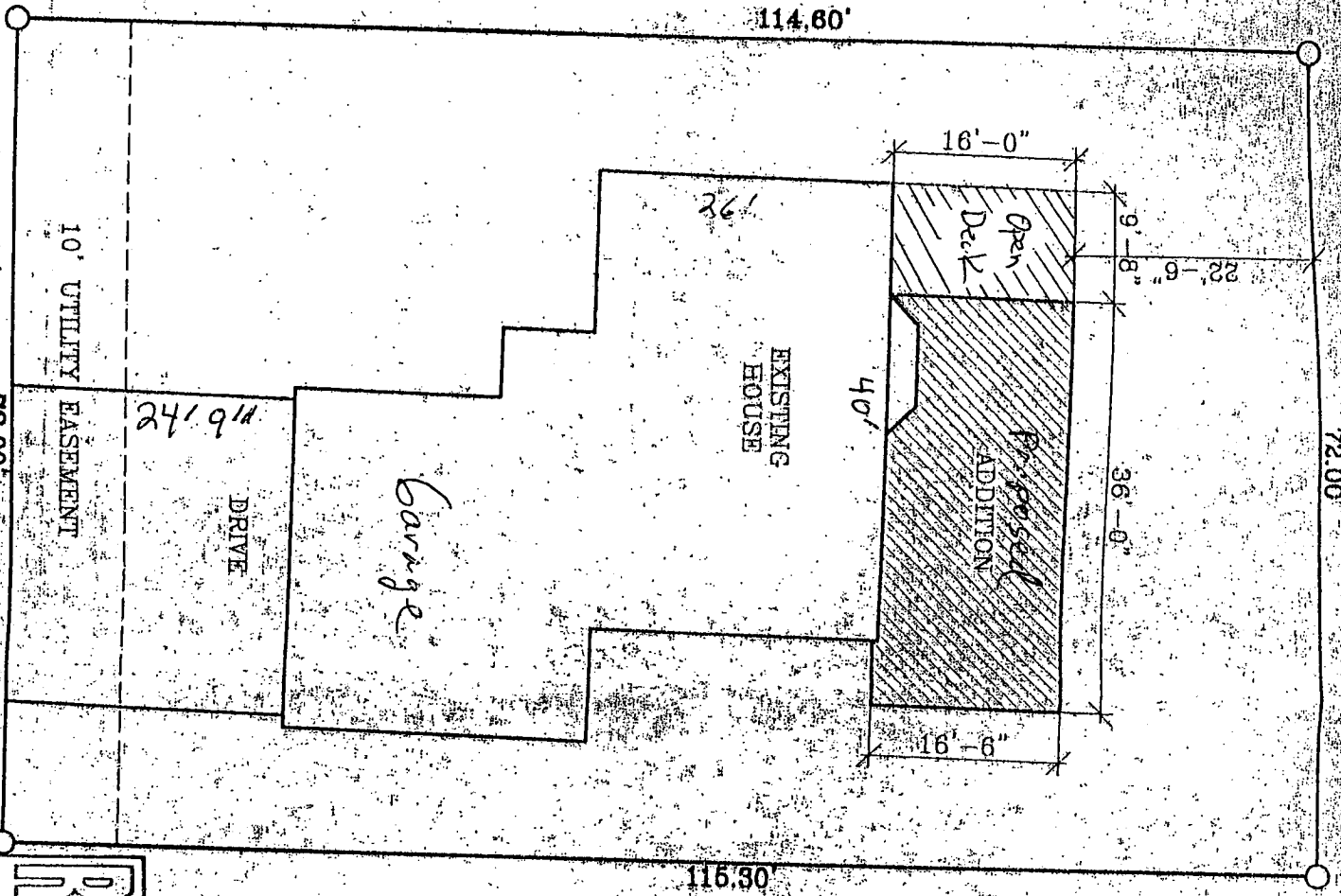
Marc & Pam Shaft

Note: It has also been our understanding that the 26 acres of woods that borders our property to the north is still not zoned for residential building as the property lies within a watershed type area. However, should this change we believe that the step topography and shape of neighboring lots would make this minimal variance unobtrusive to both our current and potential future neighbors.



1166

Applicant's
C.H. Plan



36TH STREET S.W.

RECEIVED
MAY 13 2003
ROCHESTER PLANNING DEPARTMENT

RECEIVED
JUN 18 2003
ROCHESTER OLIMPIED
PLANNING DEPARTMENT

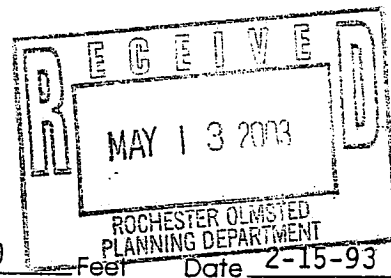
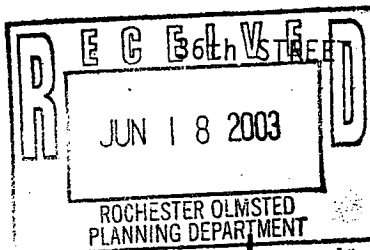
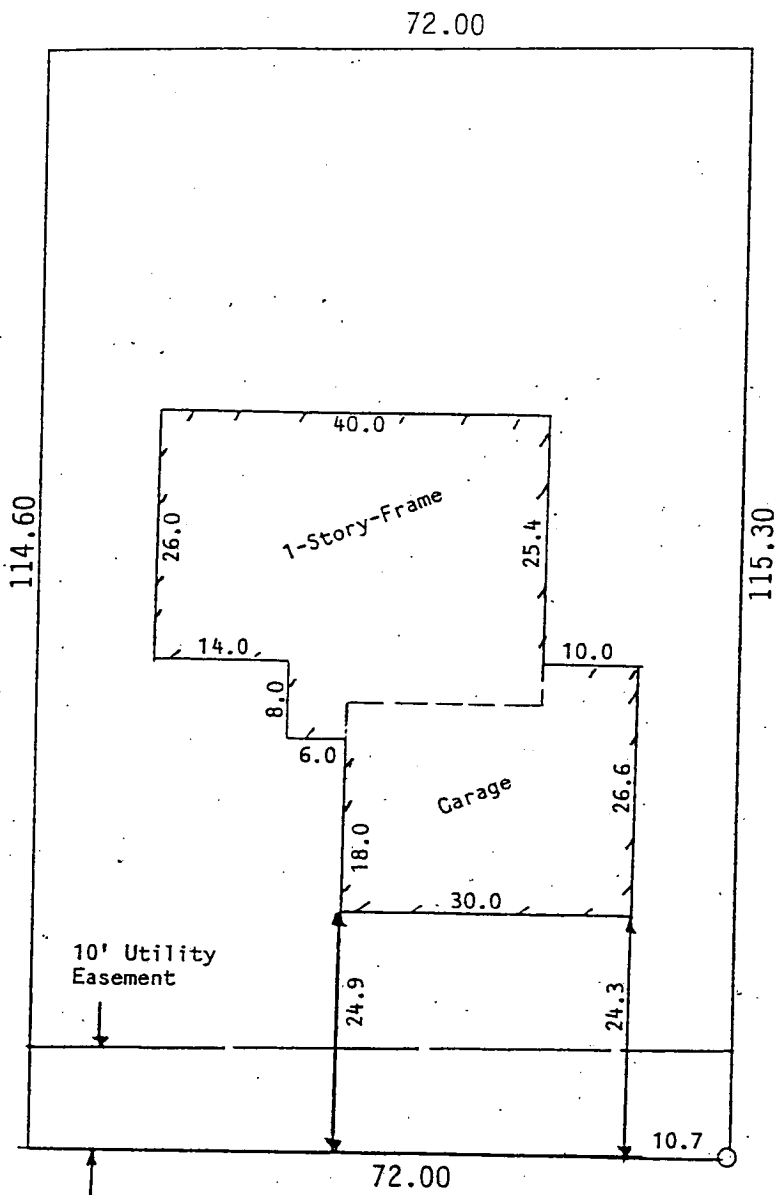
Lot 32, Block 8,
Bamber Ridge

167-

Lot 32, Block 8, Bamber Ridge, City of Rochester, Olmsted County, Minnesota

Marc Shaft
1223 36th Street SW
Rochester, MN 55902

S. + E
Survey



I hereby certify that I inspected the above described property. Dimensions are taken from the recorded plat or legal description furnished. This drawing is for informational and/or mortgage purposes only. A boundary survey may vary the relationship of improvements to property lines. This inspection was prepared for the above named party and their use only.

1" = 20 Feet Date 2-15-93

O = Monument Found Job No. 9194-93



LAND CONSULTANTS

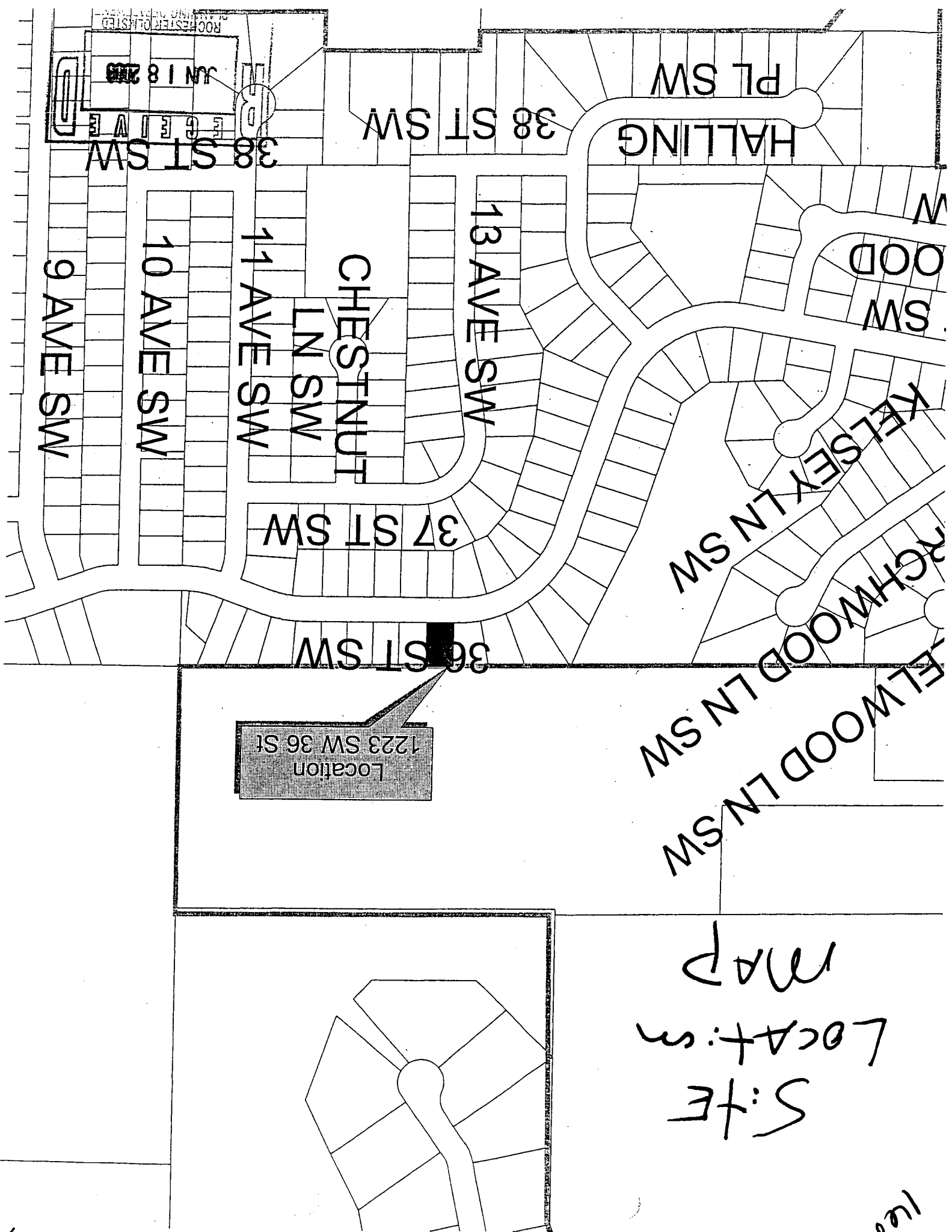
OF SOUTHERN MINNESOTA, INC.

1418 First Avenue N.E.
Rochester, Minnesota 55906
507-288-8855

Jane C. Lawin R.L.S. 18878

Site Location
map

148



Location
1223 SW 36 St

169

According to Section 60.417 in the City of Rochester Zoning Ordinance and Land Development Manual, in taking action on a variance request, the Board of Appeals shall make findings supporting the decision based on the following guidelines:

60.410 Findings for Variances: In taking action on a variance request, the approval authority shall make findings supporting the decision based on the following guidelines:

- 1) The approval authority may grant a variance to the provisions of this ordinance if it finds that:
 - a) there are extraordinary conditions or circumstances, such as irregularity, narrowness, or shallowness of the lot or exceptional topographical or physical conditions which are peculiar to the property and do not apply to other lands within the neighborhood or the same class of zoning district; and
 - b) the variance is necessary to permit the reasonable use of the property involved; and
 - c) the variance will not be materially detrimental to the public welfare or materially injurious to other property in the area, is in harmony with the general purpose and intent of this ordinance, and will not adversely affect implementation of the Comprehensive Plan; and
 - d) the variance as granted is the minimum necessary to provide reasonable economic use of the property.

The extraordinary conditions or circumstances shall be found not to be the result of an action by the applicant or property owners who have control of the property.

In addition, the approval authority shall find that development of the parcel in question cannot be integrated with development of adjacent parcels under the same ownership in such a manner so as to provide for the reasonable economic use of the total site in a manner consistent with the provisions of this ordinance.

- 2) The Board may grant a variance to the literal provisions of this ordinance if it finds that:
 - a) there has been substantial and detrimental reliance in good faith by an applicant who has received a permit or certificate issued in error by the administrative official charged with enforcement of this ordinance, and
 - b) the mistaken issuance of the certificate or permit is not the result of an action on the part of the applicant, the property owner, or any other person or party who has had control of the property, to provide misleading or incorrect information, or to knowingly withhold information necessary for the administrative official to accurately review the permit or certificate request.
- 3) The Board shall under no circumstances grant a variance that will allow a use otherwise not permitted within the zoning district or any variance of the elevation or levels for flood protection.
- 4) In granting a variance, the zoning administrator or the Board may impose such reasonable and appropriate conditions and safeguards as may be necessary to accomplish, to the extent possible under the circumstances, the purposes of the regulations or provisions which are to be varied or modified and to reduce or minimize potentially injurious effects of the variance upon adjoining properties, the character of the neighborhood, and the health, safety, or general welfare of the community. A variance and any conditions and safeguards which were made a part of the terms under which the variance was granted are binding upon the applicant and any subsequent purchaser, heir, or assign of the property, and any violation of a variance or its conditions and safeguards shall be a violation of this ordinance and punishable as such.

021